IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA 1928

WA.No. 387 of 2006(D)

AGAINST THE JUDGEMENT/ORDER IN WPC.6386/2004 Dated 30/01/2006

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APPELLANT: PETITIONER:

K.C. PAULOSE, S/O. CHACKO, AGED 57,
KIDANGEN HOUSE, MALAYATTOOR,
ERNAKULAM DISTRICT.
(RETIRED VEHICLE SUPERVISOR,
ANGAMALY DEPOT)

BY SRI.K.C.POULOSE (PARTY-IN-PERSON)
ADV.SRI.T.A.SHAJI

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. KERALA STATE ROAD TRANSPORT
CORPORATION, REPRESENTED BY ITS MANAGING DIRECTOR
TRANSPORT BHAVAN, THIRUVANANTHAPURAM.

3. DISTRIC TRANSPORT OFFICER,
KERALA STATE ROAD TRANSPORT CORPORATION
ANGAMALI DEPOT, ANGAMALI, ERNAKULAM.

BY ADV. SRI.K.PRABHAKARAN, SC KSRTC
SRI. BENNY GERVASIS, GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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W.A. NO. 387 OF 2006

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Dated this the 1st day of January 2007

JUDGMENT

Abdul Gafoor, J

The appellant retired while working as Vehicle Supervisor in the service of Kerala State Road Transport Corporation. He entered service as a driver. His entry in service was on 08.02.1973 on daily wage basis. Thereafter he was regularised in service. He retired on 30.06.1998. His complaint is that the period of leave that he had availed for employment abroad, from 08.01.1979 to 01.03.1987 had not been counted as qualifying service to grant him pension and other retirement benefits. There was no reason to exclude this period from qualifying service. His further submission is that though he joined duty on daily wages on 08.02.1973 after a training period of 6 months, his period of probation was extended unnecessarily for two years. Therefore, he was also not granted increments in the year 1973 and 1974.

2. His further prayer is that those who have qualifying service between 15 to 19 years for computing pension, one year extra service will be added to the the qualifying service. Therefore, he is to be given pension counting one more year. He again submits that he did not have any accident during his long service as a driver. One year is added for the purpose of qualifying service to compute pension, considering long accident free service, it is submitted.

3. It is submitted by the Standing Counsel for the K.S.R.T.C that the leave period cannot be counted as qualifying service for retirement benefits as he was granted leave on the specific condition that the leave period will not be counted for pension. The order sanctioning leave is appended to his service book duly countersigned by the petitioner. It was produced before us. Clause No. 2 reveals that the leave granted will not be counted for pension. Rule 26 of Part III KSR provides that time passed on leave of all kinds with or without allowances will count as qualifying service unless otherwise specified. There is a specifications mentioned in the leave sanctioning order that leave

period will not be counted for pension. Therefore, because of that specifications in the leave sanctioning order and Rule 26, he cannot claim that leave period from 08.01.79 to 01.03.1987, as qualifying service. Excluding the said period, only the remaining period shall have to be counted as qualifying service.

4. The claim regarding probation and increments due in 1973 and 74 is too belated to be considered at this distance of time.

5. The period from 08.02.1973 to 25.07.1975 has been counted as qualifying service only to the extent of 50 per cent as it was daily wage service. Contending that it shall be reckoned in full, Clause 23 of the long term settlement of the year 1999 is relied. It is effective from 01.03.1997, it is submitted.

6. True it is specifically mentioned that daily wages duty service with 10 days work will be considered as a month's for the purpose of calculating pension. Going by clause 23 of the settlement, the entire period has to be treated as qualifying

service in full. But this clause in the settlement is effective only from the date of settlement which was signed after his retirement. Only the revision of scales as per the settlement alone has retrospectivity. Consequently his qualifying service during 08.02.73 to 25.07.1975 can be reckoned only as done by the K.S.R.T.C.

7. His further contention is that those with qualifying service between 15 and 19 shall be given one year more service towards gratifying service. This is not seen reckoned as per the statement of the K.S.R.T.C. So also extra service for accident free service is also seen reckoned. The K.S.R.T.C. shall consider whether he is entitled to one year each on the said counts to be added to his qualifying service and shall revise the pension accordingly. This exercise shall be completed within a period of three months from today and the entire benefits available shall be given to him within another two months.

8. As the petitioner has appeared in person and the entire service details are complicated we have requested Advocate Shri.

T.A. Shaji to assist the Court, in stating case of the petitioner. It is because of his effort that we could reduce the burden of this case to the aforesaid extent so as to count actual qualifying service of the petitioner. The aforesaid aspect has not been truly disclosed to this Court by the K.S.R.T.C. in its statement. Taking into account this aspect, we are of the view that K.S.R.T.C shall pay a cost of Rs. 5,000/- to the petitioner which shall be paid to Advocate Shri. T.A. Shaji who had appeared for the writ petitioner. This payment shall be effected within two months.

The Writ Appeal is disposed of accordingly.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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